

Mailing Date: FEB 12 2014

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ADMINISTRATIVE LAW JUDGE
FOR THE
PENNSYLVANIA LIQUOR CONTROL BOARD

PENNSYLVANIA STATE :
POLICE, BUREAU OF : IN RE Citation No.: 13-1356
LIQUOR CONTROL ENFORCEMENT :
 : BLCE Incident No.: W04-455834
 :
v. :
 :
DOUGLAS PRODUCTS, INC. : PLCB LID No.: 31857
T/A STEVE'S INN :
301 ALLEGHENY AVE. : PLCB License No.: R-AP-SS-10156
OAKMONT, PA 15139 :
 :
 :
 :
 :

BEFORE: JUDGE RICHARD O'NEILL EARLEY
BLCE COUNSEL: NADIA VARGO, ESQUIRE
LICENSEE COUNSEL: HOLLY L. GUNA, ESQUIRE

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on July 8, 2013, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Douglas Products, Inc., t/a Steve's Inn, License Number R-AP-SS-10156, (hereinafter Licensee).

The citation contains two counts.

Count one of the citation charges Licensee with violation of the Liquor Code at 47 P.S. §4-471 and the Crimes Code at 18 Pa. C.S. §5513, alleging that on February 22 and March 4, 2013, Licensee, by its servants, agents or employees, possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on its licensed premises.

Count two of the citation charges Licensee with violation of the Liquor Code at 47 P.S. §4-471 and the Clean Indoor Air Act at 35 P.S. §637.6(a)(1), alleging that on March 4, 2013, Licensee, by its servants, agents or employees, failed to post signage as required by the Clean Indoor Air Act.

DOUGLAS PRODUCTS, INC.
T/A STEVE'S INN
IN RE CITATION NO. 13-1356

Licensee has executed a Statement of Admission, Waiver and Authorization in which Licensee: admits to the violation(s) charged in the citation, agrees that the Bureau complied with the applicable investigatory and notice requirements of the Liquor Code, authorizes the Administrative Law Judge to enter an Adjudication without a hearing based on a summary of facts as provided by the Bureau and prior citation history, and waives the right to appeal this Adjudication.

Based upon the admission(s) of Licensee and the summary of facts provided by the Bureau, I make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

Count one:

1. On February 22, 2013, a detective from the Allegheny County Police Department and Liquor Enforcement Officers made an undercover visit to Licensee's premises.
2. The sole corporate officer/manager and a male named "Ed" arrived at the premises during the Officers' visit. Enforcement Officers and the detective observed a Crazy Bugs video slot machine, a Magical Odds video slot machine, and a Cherry Master video slot machine, set up and ready for play.
3. An Enforcement Officer and the detective observed a male patron play the Cherry Master machine intermittently for an hour. At one point, Ed left the bar office, opened each slot machine, and removed money from inside the machines. When the male patron accumulated 800 credits, he called the bartender over to the machine, and she pushed the "print ticket" button which caused the credit total to revert to zero and eight tickets to be ejected. The bartender gave the tickets to Ed, who was still counting the money that he removed from the machines, and gave the money to the patron. Ed put the tickets and the remaining currency into a blue bank bag.
4. On March 4, 2013, at 1:15 p.m., a detail consisting of Liquor Enforcement Officers, detectives from the Allegheny County Police Department, and the chief of police from the Oakmont Police Department entered Licensee's premises armed with a search warrant.
5. While on the premises, Enforcement Officers inspected the three video gaming machines. After determining that each machine accepted U.S. currency, required no skill to play, contained internal metering components and methods of clearing accrued credits, they seized the video machines.
6. I find the machines to be gambling devices per se.

Count two:

7. On March 4, 2013, at 1:15 p.m., upon entering Licensee's premises, an Enforcement Officer did not observe any Clean Indoor Air Act signage posted.
8. On April 3, 2013, the Pennsylvania Department of Health sent certification to the Bureau confirming that Licensee did not possess an exemption to the Clean Indoor Air Act to permit smoking on March 4, 2013.

CONCLUSION OF LAW:

Counts one and two: Sustained as charged.

PRIOR RECORD:

Licensee has been licensed since February 24, 1993, and has had nine prior violations:

IN RE:

Citation No. 94-0267. Fine \$450.00. Licensee's appeal to Board dismissed. Licensee's appeal to Common Pleas Court dismissed.

1. Possessed or operated gambling devices or paraphernalia or permitted gambling devices on a licensed premise (machine).

Citation No. 96-2548. Fine \$150.00 and 1 day suspension with thereafter conditions. Suspension vacated.

1. Not a bona fide restaurant: insufficient seating.

Citation No. 98-2192. Fine \$300.00.

1. Not a bona fide restaurant: insufficient seating.

Citation No. 99-0361. Fine \$300.00 and 1 day suspension.

1. Not a bona fide restaurant: insufficient seating.

Citation No. 03-0391. Fine \$1,000.00 and 3 days suspension.

1. Possessed or operated gambling devices or permitted gambling on your licensed premises (machines and sports pools).

Citation No. 10-2114. Fine \$250.00.

1. Violated the Allegheny County Alcoholic Beverage Tax Law. May 1, 2009 through July 31, 2010.

Citation No. 11-1999. Fine \$400.00.

1. Violated the Allegheny County Alcoholic Beverage Tax Law. August 1, 2010 through June 30, 2011.

DOUGLAS PRODUCTS, INC.
T/A STEVE'S INN
IN RE CITATION NO. 13-1356

Citation No. 12-1365. 4 days suspension.

1. Sales after the license expired and had not been renewed and/or validated.
June 5 and 13, 2012.

Citation No. 13-0717. Fine \$300.00.

1. Violated the Allegheny County Alcoholic Beverage Tax Law.
December 31, 2012.
November 1, 2011 through December 31, 2012.

PENALTY:

The Liquor Code prescribes a penalty of license suspension or revocation or a fine of not less than \$50.00 or more than \$1,000.00 or both for violations of the type found in this case (47 P.S. §4-471).

I am permitted by the Liquor Code to consider a licensee's prior record when imposing a penalty. 47 P.S. §4-471. When considering a licensee's prior history, I am most interested in prior violations identical to the one adjudicated. All things being equal, repeated violations result in more severe penalties. Some consideration may be given to the passage of time from the last violation or violations. Thus an older violation may not count against a licensee as much as a more recent violation. For example, violations that can be triggered by forgetting to do something (such as cleaning taps), or by a third-party's actions (such as a minor attempting to trick a server to get alcohol), tend to weigh less in a repeat violation if the passage of time is significant.

However, some charges, such as operating gambling machines, do not justify automatic "discounting" of prior violations simply because of the passage of time. Unlike violations arising from a licensee's mistake, in a gambling machine case, someone must make a conscious choice to install a machine. Therefore, when a licensee is found in violation of 18 Pa. C.S. §5513, it is an indication the licensee has chosen to violate statutory obligations under the Liquor Code and the Crimes Code. When the choice is made on multiple occasions, it cannot be explained simply by the passage of time, like some statistical inevitability. Rather, it begins to look like a licensee who does not respect the law.

This is my concern in the present case. Licensee has been found in violation of §5513 on two previous occasions: Citations 94-0267 (OALJ 3/3/95) aff'd (PLCB 6/29/95), and 03-0391 (OALJ 6/24/03). The first case appears to have been thoroughly litigated, with Judge Elbling finding licensee in violation and the Board affirming the decision when licensee appealed.¹ The second case was decided as a Waiver by Judge Frisk resulting in a maximum financial penalty and three days of suspension. Given this record of violations and losing legal arguments, licensee cannot easily be viewed as an "accidental offender." Rather, licensee had every reason to know that bringing gambling machines into the premises again was a violation of the law, but

¹ Licensee filed a further appeal to the Common Pleas Court, which was dismissed for unknown reasons.

DOUGLAS PRODUCTS, INC.
T/A STEVE'S INN
IN RE CITATION NO. 13-1356

made the choice anyway. This is a troubling pattern of behavior that I hope to address with the penalty, below.

In mitigation, some consideration shall be given to the fact that Licensee has admitted to the violation(s) as charged in this citation, and has waived the right to a hearing and appeal.

Counsel for the Bureau and counsel for Licensee concur in the following penalty recommendations: Count one – six days' suspension, and count two – one day's suspension. Upon review of the factual summary presented by the Bureau, this court is of the opinion that the recommendations are acceptable.

ORDER:

THEREFORE, IT IS HEREBY ORDERED that the restaurant liquor license of Douglas Products, Inc., t/a Steve's Inn, (including all permits and Licensee Discount Card), License No. R-AP-SS-10156, be suspended for a period of seven days **BEGINNING** at 7:00 a.m. on Monday, March 24, 2014, and **ENDING** at 7:00 a.m. on Monday, March 31, 2014.

Licensee is directed on Monday, March 24, 2014, at 7:00 a.m., to place the enclosed placard of notice of suspension (identified as Form No. PLCB-1925 and as printed with red and black ink) in a conspicuous place on the outside of the licensed premises or in a window plainly visible from outside the licensed premises and to remove said license from the wall and place it in a secure location.

Licensee is advised if replacement placards are needed for any reason they are available at all Pennsylvania Liquor Stores/Wine & Spirits Shoppes.

The Bureau is directed to visit and monitor the aforementioned licensed premises for compliance with this Order.

Licensee is authorized on Monday, March 31, 2014, at 7:00 a.m., to remove the placard of suspension and return the license to its original wall location.

Jurisdiction is retained.

Dated this 24TH day of January, 2014.

kes



Richard O'Neill Earley, J.

DOUGLAS PRODUCTS, INC.
T/A STEVE'S INN
IN RE CITATION NO. 13-1356

NOTE: MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER IN THE OFFICE OF ADMINISTRATIVE LAW JUDGE AND REQUIRE A \$25.00 FILING FEE. A WRITTEN REQUEST FOR RECONSIDERATION MUST BE SUBMITTED WITH THE FILING FEE.